

Atheist Ireland



Petition

Petition Title - To give practical application to the right not to attend religious instruction in school

The Houses of the Oireachtas to guarantee and give practical application to the constitutional right to attend any school in receipt of public funding and not attend religious instruction

The Constitution and Legislation relating to the right

Article 44.2.4 of the Irish Constitution

Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

Irish version of 44.2.4

Reachtaíocht lena gcuirtear cúnamh stáit ar fáil do scoileanna ní cead idirdhealú a dhéanamh intiidir scoileanna atá faoi bhainistí aicmí creidimh seachas a chéile ná í do dhéanamh dochair do cheart aon linbh chun scoil a gheibheann airgead poiblí a fhreastal gan teagasc creidimh sa scoil sin a fhreastal

Translation

The following translation is from ‘Bunreacht na hÉireann: a study of the Irish text’, written by Micheál Ó Cearúil and published in 1999 by All Party Oireachtas Committee on the Constitution.

Article 44.2.4 (right to not attend religious instruction when funding schools)

- ‘Legislation .. shall not discriminate’ is expressed as ‘ní cead’, or ‘it is not permitted to’.
- ‘To affect prejudicially’ is expressed as ‘dhéanamh dochair do’, or ‘do harm to’.
- ‘Attend’ is expressed as ‘A fhreastal’. Ó Dónaill cites ‘an scoil a fhreastal, to attend school’ and ‘freastal ar léachtaí, to attend lectures’ as examples of ‘freastail’, ‘attend’, in the sense of ‘be present at’.
- ‘Religious Instruction’ is expressed as ‘Teagasc creidimh’. ‘Teagasc’ is translated as ‘teaching, instruction’ by Ó Dónaill, who cites ‘teagasc ábhair, teaching of a subject’.

Article 44.2.4 is reflected in Section 30-2(e) of the Education Act 1998 which states that:-
“Without prejudice to the generality of subsection (1), the Minister—
Shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.”

<https://www.irishstatutebook.ie/eli/1998/act/51/section/30/enacted/en/html>

Still in place is Section 7 of the Intermediate Education (Ireland) Act 1878. It was never repealed:-

The Board shall not make any payment to the managers of any school unless it be shown to the satisfaction of the Board that no pupil attending such school is permitted to remain in attendance during the time of any religious instruction which the parents or guardians of such pupil shall not have sanctioned, and that the time for giving such religious instruction is so fixed that no pupil not remaining in attendance is excluded directly or indirectly from the advantages of the secular education given in the school.

<https://www.irishstatutebook.ie/eli/1878/act/66/enacted/en/print.html>

According to the then Minister for Education, Micheal Martin in the Dail in 1999, the purpose of Section 30-2(e) of the Education Act 1998 is to reflect Article 44.2.4 of the Constitution. He stated that this is supported by Article 42 and also other statutory provision namely S.7 Intermediate Education (Ireland) Act 1878. See discussion in Dail in 1999

<https://www.oireachtas.ie/en/debates/debate/dail/1999-02-16/212/>

Relevant points

- The right to not attend religious instruction is part of the text and structure of the Constitution.
- The Irish version of the Constitution takes precedence (Article 25.4.6). Article 44.2.4 specifically refers to not being present at religious teaching. It does not refer to ‘opt out’ or ‘not participate’, the text refers specifically to not attending religious instruction.
- Because of Article 15.2.1 of the Constitution, funding in relation to Article 44.2.4, the right to attend any school and not attend religious instruction is the responsibility of the Oireachtas, not any Minister for Education, schools or teachers. The only power that any

Minister for Education has is to ‘administer’ the right, it is not a policy decision. No other subject is treated in this manner by the Constitution.

- Article 44.2.4 uses the words ‘affect prejudicially’ (do no harm) to the right to not attend religious instruction.
- Under Article 44.2.4 not attending religious instruction is a condition of state aid for schools. Article 44.2.4 refers to ‘the right’ in the context of the funding of schools (affect prejudicially the right). The right exists regardless of the level of funding. Despite this no state funding goes towards children who wish to exercise the right to attend a school in receipt of state aid and not attend religious instruction.
- The vast majority of schools supervise children who exercise the right under Article 44.2.4 to not attend religious instruction in the religious instruction class. No supervision is provided outside the class. In rare cases another subject is provided.
- There are no Department of Education guidelines in place statutory or otherwise in relation to ‘administering the right’ to ‘not attend’ religious instruction in all schools.
- Successive Ministers for Education have stated that it is up to each school how they ‘administer’ the right to not attend religious instruction despite the fact that under S.30-2(e) of the Education Act 1998 that responsibility lies with the Minister. The fact that the majority of schools are not implementing it at all is ignored.
- When questioned by parents, most schools state that the Department of Education does not give them enough funds to supervise children outside the religious instruction class and therefore that responsibility lies with parents. The fact that the Constitutional right to not attend religious instruction is not dependent on the amount of funding given by the Department is simply ignored.
- Other schools refuse the request to not attend and other schools at second level claim that it is not religious instruction but religious education, suitable for all and the Constitutional right under Article 44.2.4 is not engaged. The Department of Education claims that withdrawal does not arise (Circular Letter 0062/2018).

<https://circulars.gov.ie/pdf/circular/education/2018/62.pdf>

There is no constitutional or legal basis to this claim and especially since the Oireachtas in 1998 amended Section 5 (4) of the Intermediate Education (Ireland) Act 1878 in order to introduce exams in religious instruction into Junior and Leaving Certificate. It cannot now be claimed that curriculum Religion is not religious instruction (see Section 35 Education Act 1998). The amendment was required to remove the ban on exams in religious instruction. Curriculum Religion was introduced into second level schools in 2000. The Oireachtas never intended that this amendment would deprive children of their constitutional right to not attend religious instruction under Article 44.2.4 or redefine it.

<https://www.irishstatutebook.ie/eli/1998/act/51/section/35/enacted/en/html>

- The Supreme Court in 1998 found that Article 42.1 of the Constitution (the alienable right of parents in relation to Religious Education) must be read in the context of Article 44.2.4 (the right to not attend religious instruction) (Campaign to Separate Church and State v Minister for Education case pages 25,26)

<https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2019/10/CampaigncaseSupremeCourt-JudgementBarrington-1-1.pdf>

Recently the Court of Appeal stated in the Burke v Minister for Education case in 2021 that the Campaign case was binding authority (para 171).

<https://www.teachdontpreach.ie/2022/10/burke-v-minister-for-education/>

- The Court of Appeal found in 2021 (para 191) in the Burke case that the case law demonstrates that the relationship between parents, the State and the child as envisaged by Articles 40, 41, 42, is a trifecta not just of the participants but of the rule under which constitutional engagement on education must take place; namely rights, duties and powers.

- The Supreme Court said that “It is not within the competence of the Government, or indeed of the Oireachtas, to free themselves from the restraints of the Constitution or to transfer their powers to other bodies unless expressly empowered so to do by the Constitution. They are both creatures of the Constitution and are not empowered to act free from the restraints of the Constitution” (Crotty v An Taoiseach 1986).

<https://www.bailii.org/ie/cases/IESC/1987/4.html>

(All schools = Primary and second level)

(Religious instruction = Patrons programmes, also NCCA curriculum religious education at second level – an exam subject)

ACTION TAKEN TO RESOLVE ISSUE OF CONCERN BEFORE SUBMITTING THE PETITION (EN)

Over the years we have raised this issue in Ireland and also at the UN and Council of Europe under the various conventions that Ireland has ratified.

We have also met with the Department of Education.

https://atheist.ie/common/Submissions/AI_Dept_Ed_Mtg_follow-up.pdf

National bodies

Department of Education

Oireachtas Public Accounts Committee

Oireachtas Education Committee

Comptroller and Auditor General

Attorney General
Department of Finance

Here are some of the responses of the above bodies over the years.

- a) No Response
- b) An acknowledgement
- c) This is a policy decision and we don't deal with policy
- d) A one size fits all solution does not suit everyone
- e) Avoiding addressing the constitutional issues

A constitutional right is not a 'policy'.

A one size fits all solution does not suit everyone is not an answer to the fact that no practical application is given to a constitutional right. Just because some parents don't want their child to exercise the right to not attend religious instruction by 'opting out' or 'not participating' in religious instruction cannot mean that other children are denied their constitutional right to 'not attend' religious instruction under Article 44.2.4.

International bodies

UN Committee on the Rights of the Child

This UN Committee recommended in February 2023 that:-

“UN Recommendations on Freedom of thought, conscience and religion

21. The Committee urges the State party to guarantee the right of all children to practice freely their religion or belief, including by:

(a) Amending the Education (Admission to Schools) Act 2018 and the Equal Status Acts to remove any exceptions to ensuring a child's right to education in all primary and secondary schools based on religious or “ethos” grounds and to establish statutory guidelines to ensure children's right not to attend religious classes;

(b) Developing a time-bound strategy, with adequate resources, for meeting its targets for increasing the availability of multi-denominational schools by 2030, and setting a target with a time-bound strategy and adequate resources for increasing the availability of non-denominational schools.”

<https://www.gov.ie/en/press-release/9df69-united-nations-committee-on-the-rights-of-the-child-publish-its-concluding-observations-on-the-combined-fifth-and-sixth-periodic-reports-of-ireland/#>

UN Human Rights Committee

UN Committee on Economic, Social and Cultural rights

Council of Europe Advisory committee on Framework Convention for National Minorities

European Commission against racism and intolerance

Our Submissions and letters to various bodies can be found here under National and International

<https://atheist.ie/submissions/>

Some of the Submissions were made jointly between Atheist Ireland, Ahmadiyya Muslim Community and the Evangelical Alliance of Ireland. We work together on issues relating to the right of minorities in publicly funded schools.

Signed

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Katie Levine

Chris Hind

Muris O Conchuir

1st January 2024